CONSTITUTIONAL ASPECTS OF A NATIONAL BUDGET SYSTEM

Public finance possesses the elements of a science in itself, distinct from the field of economics of which broadly speaking it is usually considered a part. It is also vitally related to political science since it is one of the chief concerns of the state to raise the revenue necessary for its subsistence and to expend it in the proper manner and for legitimate purposes. It has its sanction, sometimes called the "budget right," in the organic law of the state. Some of the great struggles for constitutional government throughout the world may be traced in the history of public finance.

It is the common practice of governments, other than that of the United States, to deal with their public moneys through what is known as the budget system. This means a carefully prepared and coördinated scheme of finance dealing in summary and in detail, with the annual expenditures and receipts. This constitutes the business program of the government, drawn up by the executive departments under the supervision and control of the Treasury, and presented to the legislature for ratification upon the responsibility of the executive. The whole plan of finance is dealt with as a unit and is called "the budget."

This system lends itself the more readily to those countries having the parliamentary system of government where the executive possesses the right of legislative initiative, actively participates in legislation on the floor of the legislature, and through the prime minister as party leader controls the legislative output. In no two countries does it operate along identical lines. For example, in Germany the Imperial Chancellor, on behalf of the Emperor, exercises a much stronger control over financial legislation than does the executive in England or France.

Our institutions being more nearly akin to those of England, it is to the English budget system that we more naturally look for the purpose of illustration. Here the estimates of revenues and of expenditures are prepared each year under the supervision and control of the Treasury and approved by the cabinet. These estimates form the financial program of the government. They are introduced into the House of Commons as a project of legislation and are treated as a bill. The cabinet are members of the House (or Lords). They include the Prime Minister as leader

of the majority party, the Chancellor of the Exchequer who represents the Treasury, and all of the heads of the great executive departments.

No changes are made in the government's program of finance without the government's consent. Any enforced change in the face of government opposition, on any serious item, would lead to the resignation of the cabinet or to a new election. The House of Commons inherently possesses complete control over all financial legislation. It has, however, by a standing order,[1] dating from 1713, yielded the initiative in financial legislation to the cabinet, at the same time holding the executive branch of the government to a strict responsibility for the expenditure of the money in exact accordance with the terms of the parliamentary grant.

The budget in England is ordinarily ratified as introduced. Parliamentary control is exercised through its Select Committee on Estimates, its Public Accounts Committee, and the Comptroller and Auditor-General who is a parliamentary officer. The budget is treated as a unit in all of its stages—as to preparation, ratification, execution, audit and control.

The provisions of the Constitution of the United States relating to public finance are as follows:

> "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills."—(Art. I, Sec. 7.)
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> "The Congress shall have power to lay and-collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States . . . .
> To borrow money on the credit of the United States.
> To raise and support armies, but no appropriation to that use shall be for a longer term than two years.
> To provide and maintain a Navy."—(Art. I, Sec. 8.)
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> "No money shall be drawn from the Treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."—(Art. I, Sec. 9.)
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> "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."—(Art. XVI.)

[1] S. O. 66. See also: May's Parliamentary Practice, 11th ed., p. 545.

As bearing indirectly on the subject of public finance the following provisions may also be cited:

> The Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all the powers vested by this Constitution in the government of the United States, or any department or officer thereof."—(Art. I, Sec. 8.)
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> "Each House may determine the rules of its proceedings."—(Art. I, Sec. 5.)
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> The President "shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; . . . . . . he shall take care that the laws be faithfully executed."—(Art. II, Sec. 3.)

These provisions constitute the budget right of the federal government. The strategic position of the Congress can be readily seen. Its control over every phase of financial legislation is complete. The executive, save his power of veto, is made responsible only for giving the Congress information, for recommending measures, and for the execution of the laws. He is not, by virtue of the expressed letter of the Constitution, made a participant in legislation.

As contrasted with the development of financial procedure in foreign countries, the Congress of the United States has followed a policy of increasing decentralization. There was created in 1795 the Ways and Means Committee. It was made a standing committee for each session until 1802, when it was made a permanent standing committee.

From the time of its creation until 1865 the Ways and Means Committee had charge of all of the bills for the raising of revenue and all of the annual appropriation bills. The whole plan of finance was thus in the hands of one committee of the House. In 1865 the Appropriations Committee was created to take over all bills relating to expenditures, leaving to the Ways and Means Committee its present function of dealing with revenue bills only. In 1883 the Committee on Rivers and Harbors was created to take over all bills relating to the improvement of rivers and harbors.

In 1885 the present committee system of appropriating money was established. Bills relating to appropriations for the following services were taken away from the Committee on Appropriations and distributed as follows: For the diplomatic and consular service to the Committee on Foreign Affairs; for the

military establishment to the Committee on Military Affairs; for the naval establishment to the Committee on Naval Affairs; for the Indian service to the Committee on Indian Affairs; for pensions to the Committee on Pensions; for the Post Office to the Committee on Post Offices and Post Roads; for the Department of Agriculture to the Committee on Agriculture; for claims against the government to the Committee on Claims. This left in the hands of the Appropriations Committee the following bills: Legislative, executive, and judicial appropriations; sundry civil appropriations; fortifications; District of Columbia; and the deficiencies appropriations.[2]

Thus it is seen that the work of financial legislation of the House is divided among nine different committees. These Committees work independently of each other. There is no attempt at coördination in relation to expenditures and no possibility of coördination of revenues and expenditures, since the Committee on Ways and Means has no organic connection with the spending committees. No plan of finance is presented in advance; in fact there is no unified plan at all. A complete view of the financial legislation of the government cannot be obtained until after the close of the session of Congress. There is no preview and no coördination. There is retrospect only.

The executive as such has no responsibility for the nation's finances except to spend the grants according to law. He may make recommendations to the Congress for certain financial legislation but these are treated as suggestions only. He may also exercise his power of veto over a financial measure of which he disapproves. The relation of the Secretary of the Treasury to public finance is clerical. He has no active control over any of the vital processes. The annual book of estimates of expenditures do not form a part of the legislative program. The Secretary has no power to criticise or revise them. They are submitted to Congress just as they come from the heads of the various departments. There is no attempt at coördination. They are not really estimates but are requests from the spending departments for funds for another year, the request from one department being unrelated to the request from another.

The spending committees of the Congress treat these so called estimates as suggestions—but suggestions not from the Secretary of the Treasury but from the heads of the departments concerned. In preparing a given appropriation bill the committee

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[2] See The Need for a National Budget. H. R. Doc. 854, 62d Congress, 2d Session, p. 94, ff.

calls the head of the department before it and submits him to a cross examination. They may also examine a number of other persons interested. They then proceed to draft the bill as they see fit. This process goes on simultaneously in the nine committees of the House and is often repeated in corresponding committees of the Senate. After the bills have been thus prepared and reported they are still subject to amendment, and to the addition of new items even to the complete alteration of the bill by private members on the floor.

The Congress therefore has for more than a century exercised complete control over all phases of the financial program. It treats money bills as other bills, exercising the legislative initiative in respect to them also.

Now it is proposed to supplant the present system by a national budget system. And in this connection we are not considering here the compromise proposed whereby the Congress will exercise all of its present powers through a budget committee or through an enlarged and reorganized appropriations committee. The budget system ordinarily advocated involves, as its prime factor, the relinquishing of the initiative in financial legislation to the executive by the Congress.

What constitutional changes would be effected in the accomplishment of such an aim? In the first place the executive branch of the government would occupy a new preëminence in our constitutional system. The President would possess the functions of a Prime Minister in relation to public finance. He would take the responsibility for the preparation of the budget. Complementary to this the Congress would yield its power of amendment by way of increasing any item in the budget, and also its power to introduce any bill making a charge upon the Treasury, without the consent of the executive. The President therefore would, through the Cabinet, settle all matters of financial policy, and prepare in advance of the sitting of the Congress a complete unified financial program—a budget—coördinating the estimates of the spending departments, and balancing proposed expenditures with estimated and proposed revenues.

This budget would be made public at the opening of the Congress each year. The Congress would retain the power of complete control by ratifying it and seeing that no money was spent except in strict accordance with the legislative grant. The work of the Congress would be greatly simplified. The time of the committees would be devoted more largely to substantive legislation leaving the technique of departmental finance to be

worked out by the experts in the various spending departments, under Treasury supervision.

The position of the Secretary of the Treasury would have a new meaning. Its function would cease to be merely clerical and administrative. The Secretary of the Treasury would become the finance minister of the United States, and as such would occupy a position of tremendous importance in our constitutional system. Although the President would, in theory, be responsible for the budget, the Secretary would bear the chief burden and exercise the actual authority.

He would, in behalf of the Treasury, become immediately responsible for the estimates of expenditures. They would be prepared under his supervision. He would have the ultimate decision, outside of matters of policy, of all new projects making a charge upon the Treasury, all increases over the previous appropriations, and over the renewal of the existing grants. Instead of appearing before the committees or sub-committees of the Congress, the heads of the spending departments would submit all of their proposals to him for approval. The detailed annual estimates which are now submitted to the Congress through him in an unrevised form would be submitted to his office. Here they would be examined by experts, scrutinized, criticised, and coördinated into a unified annual program to be approved by the Secretary and, as to policy, by the Cabinet. The Treasury would at all times keep in close touch with the spending departments in order intelligently to pass upon their proposed expenditures.

Thus the Secretary of the Treasury would control the budget in its preparatory stage. This means that under the national budget system he would in fact become the initiatory force in all financial legislation, a position vastly superior to the one he now holds.

His control over the expenditures in the fighting branches of the government, Army, Navy and Fortifications, would naturally be of a perfunctory nature, as these expenditures involve matters of high policy as well as a peculiar professional skill and technique which could only be intelligently acted upon by the heads of these branches. His relations to these would be to present the condition of the Treasury and see that no projects are undertaken which cannot be met out of existing or proposed funds.

The Secretary of the Treasury, in addition to control over the preparation of the estimates of expenditures, would also at the same time prepare estimates of the revenues which the existing

system of taxation would bring in. If they appeared insufficient to meet the estimated expenditures he would have to devise, under the direction of the President, new methods of meeting the deficiency. If they appeared in excess of expenditures he would propose certain reductions in taxation. His duty would be to see that revenues balanced with expenditures, striving on the one hand to avoid a deficit and on the other a surplus.

This work of the Secretary of the Treasury would precede the meeting of the Congress in December. The budget would be prepared, approved by the President and the Cabinet, and submitted to the Congress early in December. It would contain in summary and in detail the whole scheme of governmental finance for the coming fiscal year both as to money to be spent and revenues to be raised. The executive branch of the government, to whom the money is to be entrusted for expenditure, would assume responsibility to the Congress and to the people for the budget.

The budget would be introduced into the House as a bill. It would go through the usual stages. Its passage would mean the ratification of the government's program.

Another innovation in this connection in our constitutional system is the proposal that the members of the cabinet be granted a seat in the House and a voice, but not a vote, in the proceedings relative to the budget. This procedure would follow as a necessary consequence upon the adoption of the budget system. It would be the program of the executive branch of the government. There would be many items of a technical nature to be explained and questions of governmental policy to be defended. This need would be met by having the proper representatives of the government present to meet criticisms, to answer questions, and to make the desired explanations.

Thus we see that the implications of a budget system are increased power and responsibility for the President, a new function for the Cabinet in deciding matters of financial policy and in representing them on the floor of the House, a real responsibility on the Secretaries of War and Navy respectively for expenditures, and an elevation of the position of the Secretary of the Treasury to that of finance minister in a real sense of the word. So much for the executive branch of the government.

On the other hand the committee system of making appropriations would cease. The budget bill would be recognized as an administration measure. The Congress would relinquish its

power to add any new item, to increase any item, or to consider any measure which would impose a burden upon the Treasury unless such a measure had the sanction of the executive.

Granting that the adoption of such a system is desirable, could it be accomplished under the present terms of the constitution? Is it possible under the general provisions of the constitution to develop a system of procedure to which a national budget system as above indicated could be adopted? Apropos of this discussion we have seen that the present committee system of financial procedure in the Congress rests upon no higher authority than the rules of the House and the Senate, the ultimate basis being the general provision of the Constitution that each house shall have the power to determine the rules of its own proceedings.[3]

The constitution has imposed upon the President the obligation of periodically informing the Congress as to the state of the Union. Here is a strong point of contact for budgetary procedure. Coupled with the provision that he shall recommend to the Congress such measures as appear to him necessary and expedient (Art. II, Sec. 3), we are given a basis for the exercise of the initiative by the executive in financial legislation. He can and does now appear before the Congress and in person advocates the passage of legislation. A special adaptation of this procedure could easily be made applicable to budgetary legislation.

In order to make effective the complete executive initiative in budgetary legislation a simple but radical change in the rules of the House and of the Senate would have to be made. This is the crux of the whole matter. The present committee system of financial control would have to be abolished. A new rule would have to be adopted which would provide in effect that no charge shall be made upon the Treasury except upon the request of the executive. A similar rule would follow fixing the authority of the executive to provide revenues. This would mean that the Congress would relinquish the power to consider money bills other than those introduced upon the authority of the President.

Supplementary to this a further rule could be made extending the privileges of the floor to the members of the Cabinet. The vote of course could not be extended, but under the budget system the actual vote is not necessary. The personal presence

[3] Art. I, Sec. 5.

of the President's representatives with a voice in the discussion of the budget, especially as to explanation and defense, is sufficient.

The passage of one statute would be needed to strengthen the control of the Treasury especially over the initiatory budgetary processes. The Secretary of the Treasury would have to be thus empowered to classify, revise, reduce, and coördinate the departmental estimates and stand responsible for them. In like manner would be made his authority over the revenues. The Congress has the power to do this under the general provisions of the Constitution above cited.[4]

The Congress can alter its method of procedure relative to the business before it, and can provide by statute for the further limitation of its power by delegating certain functions to certain executive officers, but the Congress cannot escape its constitutional responsibilitiy for the ultimate control over the nation's purse. The constitution specifically provides that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law" (Art. I, Sec. 9) and that "the Congress shall have power to lay and collect taxes, duties . . . . . to borrow money . . . . . to support armies . . . . . to maintain a navy" (Art. I, Sec. 8). The authority to levy the tax and the authority to appropriate money must forever remain with the Congress. There appears nothing here, however, which would in any way obstruct or limit the operation of the budget system.

From the foregoing situation it appears quite feasible to adopt a complete national budget system without making any change in our written Constitution. A few amendments to existing statutes and few changes in the rules of the House and Senate would provide the necessary modus operandi. The transition, so far as its legal phases are concerned, could be made easily and quickly.

There are, however, practical difficulties besetting the inauguration of so radical a change in our methods of procedure in financial legislation. We have always clung to the constitutional theory of separate and coördinate governmental powers. The constitution was framed under that influence. It has been handed down as a tradition. It has made itself felt in the governmental organizations of our states and even in the lesser units of counties and cities. How then could we reconcile the apparent giving

[4] Art I, Sec. 8.

over to the executive a part of the legislative power, with our traditional theories of constitutional government?

There is a point of contact in our governmental practice where this tradition may be re-examined and clarified. It lies in the extra-legal field of party activity. The development of the political party as a determining factor in national legislation has been considered largely from the practical rather than the philosophical point of view. We have never legally recognized party responsibility for legislation, yet we do hold the party in power responsible, in a loose sort of a way, for whatever legislation is passed. From the party standpoint the President, and his Cabinet, have one and the same interest with the members of the majority party in the Congress. The President is recognized as the leader of his party. To his party he has a very definite function and responsibility. In consultation with his Cabinet and other members of his party, he formulates the party program. He assumes the responsibility to the country for the work of his party. He does actually participate in the legislation of the Congress by having bills introduced which are regarded as administrative bills and by insisting on certain legislative measures to which he considers his party pledged.

Now here is the point of contact with the budget system. It involves a closer application of party responsibility in the particular field of public finance. Recognize the party as the working unit in legislation and legalize the position of the executive as party leader in financial legislation. The party in power is already, in fact, held responsible for the taxes it levies and the money it spends. It is only a short step to localize this responsibility on the shoulders of the executive and give it a definite constitutional status.

In this manner we could effectively adopt the budget system without adopting the so-called parliamentary form of government. The Congress would not lose any of its constitutional powers. It would retain a strict control over the nation's finances since no money could pass into or out of the Treasury without its ratification. It would also see that no money was diverted from the purpose for which it was granted. The actual financial program would be given over to the executive to prepare, to initiate into the Congress and to execute after the Congress has given its formal approval.

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